

*The Office Of
Hon. Mark Finchem, State Representative 2015 -2022*



FOR IMMEDIATE RELEASE

Prescott, Arizona, July 22, 2024... Not long ago—in early 2021—George R. Wentz, Jr., Esq. and I formed the Guardian Defense Fund, Inc (GDF), originally an Arizona and now an Idaho not-for-profit corporation with a mission to advocate for free and fair elections and to defend the founding principle that the United States of America is a republic of laws, not of man, and neither her elected representatives and executives nor her judges and justices are above or beyond their reach.

In the case of DONALD J. TRUMP v. UNITED STATES OF AMERICA, we filed an *amicus curiae* brief addressing the fundamentally unconstitutional and illegal appointment of Special Counsel Jack Smith by Attorney General Merrick Garland. The Constitution places extraordinary executive power in the hands of a single individual—the President. The Constitution empowers the President with the solemn duty to “take Care that the Laws be faithfully executed.” To allow an Attorney General to unilaterally appoint counsel to investigate a former President for acts allegedly committed during his Presidency gravely constrains Presidential authority, for as the Supreme Court stated in 2010, “the President cannot ‘take Care that the Laws be faithfully executed’ if he cannot oversee the faithfulness of the officers who execute them.” *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 484 (2010).

Congress, recognizing the constitutional limitations, narrowly crafted Title VI of the Ethics in Government Act in 1978 to allow investigation of a president, which was upheld by the Supreme Court in 1988. This law required the joint efforts of the Legislative, Judicial, and Executive branches, and Congress reenacted it each time there proved a need—and allowed it to sunset when that need subsided, the last time in 1999. The general statutes Attorney General Garland used to attempt to justify his purported appointment do not grant this extraordinary authority, and therefore the Special Counsel’s appointment was void from the start.

“[t]here is currently no law on the books that provides for the appointment of a special prosecutor with the authority to investigate a President, as Title VI did. It is clear from past Congressional action that if Congress intended to have such a law in force, it knows how to do so. Indeed, it reenacted Title VI specifically to permit the Starr investigation, and then once again removed it from the books. The only conclusion that can be drawn is that it is the intent of Congress that there shall be no more special prosecutors investigating the President—that is, unless Congress were to again legislate Title VI or a substantially similar law into action.”

We were pleased to see Justice Thomas, in his concurrence, acknowledge this critical constitutional limitation and address the statutes and cases we brought to the Court's attention in our *amicus* brief. Then, on July 15, 2024, Judge Aileen Cannon of the United States District Court, Southern District of Florida, wholly dismissed the superseding indictment in *United States of America v. Trump*, Case No. 23-80101, alleging that former President Trump wrongfully retained classified documents after his presidency, based largely on these same arguments. In her excellent and scholarly opinion, she expressly acknowledged Justice Thomas's concurrence and found that the Special Counsel's appointment fundamentally violated the same constitutional safeguards and statutes that our brief addressed.

The Guardian Defense Fund is proud to have played such a significant role in defending against unconstitutional overreach. Our Republic needs people of good will prepared to stand for our founding principles, and GDF intends to continue to defend the rule of law through this great country.

Inquiries may be directed to

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[GDF's Amicus Curiae Brief](#)

[Justice Thomas's Concurrence](#)

[Judge Cannon's Decision](#)

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